

**L A W   O F F I C E**  
**ROBERT S. FRANKLIN, P.A.**

**Robert S. Franklin**  
Admitted Florida, New York

October 12, 2007

VIA ECF & HAND DELIVERY

Honorable Lewis A. Kaplan, U.S.D.J.  
United States District Court  
United States Courthouse  
500 Pearl Street, Room 1310  
New York, New York 10007

Re: Mathieson v. DeNiro  
Docket No. 07 CIV 8527 (LAK)

Dear Judge Kaplan:

I am counsel for John C. DeNiro, the defendant in the above referenced matter. Yesterday I filed a motion seeking an enlargement of time for defendant to submit opposition papers and for an adjournment of the scheduled hearing in regard to plaintiff's motion brought by Order to Show Cause. Last evening I received opposition papers from plaintiff's counsel to this request for an extension of time. Certain issues have been raised which I wish to address.

I first became aware of this matter on or about October 2, 2007, at which time I received copies of the Complaint, Brief and Declaration in support of plaintiff's motion for a preliminary injunction along with an unsigned Order to Show Cause. I corresponded with plaintiff's counsel that day.

From October 4, 2007, I was out of my office, and did not return until October 10, 2007. In the afternoon of October 4<sup>th</sup> following a day of depositions, I called in to my secretary, Ms. Anais Veiga, who informed me that she had received some papers from the plaintiff's counsel on her personal e-mail account. She told me that they were the same papers that we already had. I learned from reviewing exhibits provided by plaintiff's counsel last night, that included within the approximately 90 pages sent was the 2 page Order to Show Cause which had been signed and contained the hearing date and other information. My secretary has informed me that she did not see this document and failed to inform me of the information it contained.

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On October 5, 2007, while in Colorado, I accessed my e-mail from the firm e-mail account which included a letter from plaintiff's counsel to which I responded. In the exchange of e-mails with counsel the subject of the dates within the Order to Show Cause did not come up.

In defendant's motion submitted yesterday I truthfully stated to the Court that I did not know of the hearing date and opposition paper submission date until I met with Mr. DeNiro upon my return to my office on October 10, 2007. If my secretary's carelessness and resulting misinformation communicated to me has caused confusion, I take responsibility for it and apologize to the Court and counsel.

I have been admitted to practice before the United States District Court for the Southern District of New York since 1976. In no way did I intend to misrepresent to the Court or counsel any fact asserted in defendant's motion.

In an abundance of caution, over the last 24 hours, I have prepared papers in response to plaintiff's motion for a preliminary injunction which can be filed today within the time constraints of the Order to Show Cause. Therefore, that portion of defendant's request to enlarge his time to respond is no longer necessary. However, I still have a scheduling conflict as a result of a class action certification hearing in Florida which makes it impossible for me to appear for the hearing on the preliminary injunction set for October 17, 2007. I can travel to New York on Friday, October 19, 2007 to be present for the hearing, or anytime thereafter.

It is therefore respectfully requested that the hearing be adjourned for a two day period, to October 19, 2007 or to whatever, other date is convenient for the Court.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Robert S. Franklin".

Robert S. Franklin

cc: James E. Cecchi, Esq. (via ECF and e-mail)